

SNELL & WILMER L.L.P.

Chad R. Fears
Nevada Bar No. 6970
Kelly H. Dove
Nevada Bar No. 10569
3883 Howard Hughes Parkway #1100
Las Vegas, Nevada 89169
Telephone: (775) 785-5206
Telephone: (775) 785-5286
Email: cfears@swlaw.com
kdove@swlaw.com

KILPATRICK TOWNSEND & STOCKTON LLP

Joshua Pond (Pro Hac Vice)
Akarsh P. Belagodu (Pro Hac Vice)
Suite 900, 607 14th Street, NW
Washington, DC 20005
Telephone: (202) 508-5854
Telephone: (202) 508-5853
Email: jpond@kilpatricktownsend.com
Email: abelagodu@kilpatricktownsend.com

Steven Moore (Pro Hac Vice)
Eighth Floor, Two Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 273-4741
Email: smoore@kilpatricktownsend.com

Megan E. Bussey (Pro Hac Vice)
The Grace Building
1114 Avenue of the Americas
New York, NY 10036
Telephone: (212) 775-8708
Email: mbussey@kilpatricktownsend.com

William E. Mosley (Pro Hac Vice)
Norris P. Boothe (Pro Hac Vice)
1080 Marsh Road
Menlo Park, CA 94025
Telephone: (650) 324-6364
Telephone: (650) 462-5305
Email: wmosley@kilpatricktownsend.com
Email: nboothe@kilpatricktownsend.com

HIGGINS BENJAMIN, PLLC

Kenneth Gumbiner (Pro Hac Vice)
101 West Friendly Avenue, Suite 500
Greensboro, NC 27401
Telephone: (336) 808-8012
Email: kgumbiner@greensborolaw.com

Attorneys for Plaintiff
RACING OPTICS, INC.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

RACING OPTICS, INC., a Nevada corporation,

Plaintiffs,

vs.

AEVOE CORP.
d/b/a MOSHI, a California corporation,

Defendant.

Case No.: 2:15-cv-01774-RCJ-VCF

**AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

JURY TRIAL DEMANDED

Plaintiff Racing Optics, Inc. (“Racing Optics”) brings this Complaint for Patent Infringement against Defendant Aevoe Corp., doing business as Moshi Corp. (“Aevoe”) and alleges as follows:

1. This action for infringement of United States Patent Nos. 9,128,545, 9,104,256, 8,974,620, and 9,274,625 arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271 and 281-285. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a).

2. Since its founding in 1999, Racing Optics has developed and delivered high-performance lens protection systems to customers around the world. Founding brothers Bart and Steve Wilson, together with Steve’s son, Seth Wilson, first pioneered laminated plastic “tear-off” protectors for high-speed racing. Stacks of optically engineered laminated lenses were applied to race car windshields, motorcycle goggles, and racing helmet visors. The topmost layer of this stack of lenses can be torn off during a race to reveal a clean and undamaged under-layer, providing a clear, unencumbered view of the racetrack.

3. Beyond racing, Racing Optics’ lens protection technology is also used in, among others, medical, military, consumer, and industrial markets. Racing Optics sells its lens protection systems, both domestically and internationally, from its headquarters in Las Vegas, Nevada. Racing Optics sells under its own brand and as an Original Equipment Manufacturer to others including 3M Company, Stryker Corporation, and Oakley Inc. Racing Optics sold over \$9 Million of products in 2014 and close to \$5 Million of products in the first six months of 2015.

4. Racing Optics has applied its knowledge, experience and ability to innovate to create lens protectors suitable for use on a variety of products. With the advent of smartphones, tablet- and laptop-computers, Racing Optics initially conceived of a screen protector that attaches with full-adhesive across the entire surface of the display, including touchscreen displays.

5. Racing Optics then created and developed a novel “bubble-free” screen protector, to provide easier installation and better protection for displays. Conventional full-adhesive screen protectors are a challenge to install without leaving air bubbles and other artifacts trapped between the adhesive and the screen. By eliminating the full adhesive in the central area of the display, and spacing the bubble-free screen protector away from the display, Racing Optics created an enclosed “air bearing” between the protector and the screen to be protected. In so doing, the “air-bearing” eliminates air bubbles and other artifacts during installation and use, as well as provides the device with protection from damage when dropped or struck.

6. On May 14, 2010, Racing Optics sought patent protection for its new technology by filing U.S. Patent Application No. 12/780,443 (the ‘443 application), titled “Touch Screen Shield.” On November 1, 2011, the ‘443 application was published and became a matter of public record.

7. In mid-2012, Jon Lin—President and Executive Director of Defendant Aevoe—approached Racing Optics regarding the ‘443 application after finding it in United States Patent and Trademark Office (“PTO”) records.

8. In connection with this inquiry from Aevoe, Racing Optics learned of the issuance of U.S. Patent No. 8,044,942 (the ‘942 patent), assigned—according to the patent—to Aevoe, co-invented by Mr. Lin, and claiming a bubble-free touch screen protector. Racing Optics further learned that Aevoe had instituted a litigation campaign to enforce the ‘942 patent, and that the ‘942 patent claimed priority back to a provisional application Aevoe filed on January 18, 2011, a full eight months after Racing Optics filed its ‘443 application in May 2010. By 2013, Aevoe had filed five suits against alleged infringers of its ‘942 patent, including three filed in this District.¹

¹ *Aevoe Corp. v. Splash Products LLC*, No. CV 11-06165 MEJ (N.D. Cal. Dec. 7, 2011); *Aevoe Corp. v. AE Tech Co. Ltd.*, No. CV 11-06164 HRL (N.D. Cal. Dec. 7, 2011); *Aevoe Corp. v. AE Tech Co. Ltd. et. al*, No. CV 12-00053 GMN (D. Nev. Jan. 1, 2012); *Aevoe Corp. v. Shenzhen*

9. Racing Optics’ own ‘443 application issued as U.S. Patent No. 9,128,545 (the ‘545 patent) on September 8, 2015. The ‘545 patent claims Racing Optics’ bubble-free touchscreen protector technology.

10. On August 11, 2015 the PTO issued U.S. Patent No. 9,104,256 (the ‘256 patent) to Racing Optics. The ‘256 patent is related to Racing Optics’ ‘545 patent, and further claims Racing Optics’ bubble-free touch screen protector technology.

11. On March 10, 2015 the PTO issued U.S. Patent No. 8,974,620 (the ‘620 patent) to Racing Optics. The ‘620 patent is related to both Racing Optics’ ‘545 and ‘256 patents and includes still further claims to Racing Optics’ bubble-free touch screen protector technology.

12. On March 1, 2016 the PTO issued U.S. Patent No. 9,274,625 (the ‘625 patent) to Racing Optics. The ‘625 patent is related to Racing Optics’ ‘545, ‘256, and ‘620 patents and includes still further claims to Racing Optics’ bubble-free touch screen protector technology.

13. As its patent rights were secured, Racing Optics turned its attention to selling products protected by its new patents. Racing Optics has sought and continues to seek a manufacturer willing to produce quality products at a competitive price. These attempts included contacting a manufacturer that currently manufactures other products for Racing Optics. That manufacturer, however, informed Racing Optics that it could not produce Racing Optics’ bubble-free screen protector because of Aevoe’s patented bubble-free screen protectors.

14. In the meantime, Aevoe has continued its litigation campaign—now numbering ten suits, with seven in this district—reaping injunctions and damages based on its ‘942 patent, despite Racing Optics’ earlier invention of the technology. Upon information and belief, Aevoe currently dominates the U.S. bubble-free protector market with its Moshi iVisor product line, a significant component of its \$146 million in annual worldwide production of touchscreen protectors. Yet, as described in this complaint, the iVisor products infringe Racing Optics ‘545, ‘256, ‘620, and ‘625 patents.

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Membrane Precise Electron Ltd., No. CV 12-00054 GMN (D. Nev. Jan. 11, 2012); *Aevoe Corp. v. PhoneDevil Ltd.*, No. CV 12-00514 GMN (D. Nev. Mar. 27, 2012).

15. Aevoe's accused iVisor products rely on Racing Optics' patented technology; yet Aevoe is not authorized to practice any of Racing Optics' patent claims.

16. Aevoe is well aware that it has been engaging in and continues to engage in the unauthorized practice of Racing Optics' patented inventions. As described throughout this complaint, Aevoe acted willfully with respect to the '545, '256, '620, and '625 patents in light of its knowledge of the '443 application since at least mid-2012 when Aevoe executive Jon Lin contacted Racing Optics about that application. At the very least, since its discovery of the '443 application Aevoe acted with willful blindness to the '256, '620, and '625 patents which are all related to and claim priority to the '443 application. As shown in this complaint, Aevoe's past and continuing patent infringement has been willful.

17. As described further throughout this complaint Aevoe competes with Racing Optics, and Racing Optics has not licensed its '545, '256, '620, and '625 patents to any competitors.

18. In this suit, Racing Optics seeks to enjoin Aevoe and its infringing iVisor products, and to recover damages for Aevoe's infringement.

PERSONAL JURISDICTION AND VENUE

19. This Court has personal jurisdiction over Aevoe. Aevoe has consented to personal jurisdiction here by previously selecting this Court in which to file at least seven other lawsuits, all related to the technology at issue in the present Complaint.²

20. Additionally, this Court has personal jurisdiction over Aevoe because it conducts business within the State of Nevada. Upon information and belief, Aevoe, directly or through subsidiaries or intermediaries (including distributors, retailers and others), ships, distributes, offers for sale, sells, designs, manufactures, and advertises products and/or services that directly and/or indirectly infringe the '545, '256, '620, and '625 patents in the District of Nevada. Aevoe, directly and

² *Aevoe Corp. v. AE Tech Co. Ltd. et. al*, No. CV 12-00053 GMN (D. Nev. Jan. 11, 2012); *Aevoe Corp. v. Shenzhen Membrane Precise Electron Ltd.*, No. CV 12-00054 GMN (D. Nev. Jan. 11, 2012); *Aevoe Corp. v. PhoneDevil Ltd.*, No. CV 12-00514 (D. Nev. Mar. 27, 2012); *Aevoe Corp. v. Fellowes, Inc.*, No. CV 13-00037 GMN (D. Nev. Jan. 9, 2013); *Aevoe Corp. v. Case-Mate, Inc. et al.*, No. 13-01477 (D. Nev. Aug. 16, 2013); *Aevoe Corp. v. BodyGuardz LLC*, No. 13-02151 GMN (D. Nev. Nov. 20, 2013); and *Aevoe Corp. v. i-Blason LLC*, No. CV 15-00149 RFB (D. Nev. Jan. 26, 2015).

1 through its subsidiaries and intermediaries, has purposefully and voluntarily placed one or more
2 of its infringing screen protector products, as described below, into the stream of commerce with
3 the expectation that they will be sold to and used by consumers in the District of Nevada. These
4 infringing screen protectors have been and continue to be purchased and used by consumers in the
5 District of Nevada. Aevoe has committed acts of patent infringement within the District of
6 Nevada.

7 21. Venue is proper in the District of Nevada pursuant to 28 U.S.C. §§ 1391 and 1400(b).
8 Aevoe is a corporation subject to personal jurisdiction in this District and is therefore deemed to
9 reside in this District under 28 U.S.C. §1391(c). Venue is proper in this District under 28 U.S.C.
10 §1391(b)(2) because a substantial portion of the events giving rise to the claims for relief stated in
11 this Complaint occurred in this District.

12 **THE PARTIES**

13 22. Plaintiff Racing Optics is a Nevada corporation with its principal place of business in Las
14 Vegas, Nevada.

15 23. Upon information and belief, Defendant Aevoe is a California Corporation with its
16 principal place of business in Sunnyvale, California. Aevoe designs, manufactures, uses, sells,
17 and/or offers for sale in the United States and in this District, accessories for electronic devices,
18 including screen protectors for cell phones, tablets, and other computing devices.

19 **THE ASSERTED PATENTS**

20 24. On September 8, 2015, the U.S. Patent and Trademark Office duly and legally issued U.S.
21 Patent No. 9,128,545 entitled "Touch Screen Shield" to inventors Stephen Wilson, Bart Wilson,
22 and Seth Wilson.

23 25. Racing Optics is the owner by assignment of the '545 patent and possess all rights of
24 recovery under the '545 patent. A true and correct copy of the '545 patent is attached hereto as
25 Exhibit A and incorporated herein by reference.

26 26. On August 11, 2015, the U.S. Patent and Trademark Office duly and legally issued U.S.
27 Patent No. 9,104,256 entitled "Touch Screen Shield" to inventors Stephen Wilson, Bart Wilson,
28 and Seth Wilson.

27. Racing Optics is the owner by assignment of the ‘256 patent and possess all rights of recovery under the ‘256 patent. A true and correct copy of the ‘256 patent is attached hereto as Exhibit B and incorporated herein by reference.

28. On March 10, 2015, the U.S. Patent and Trademark Office duly and legally issued U.S. Patent No. 8,974,620, entitled “Touch Screen Shield” to inventors Stephen Wilson, Bart Wilson, and Seth Wilson.

29. Racing Optics is the owner by assignment of the ‘620 patent and possess all rights of recovery under the ‘620 patent. A true and correct copy of the ‘620 patent is attached hereto as Exhibit C and incorporated herein by reference.

30. On March 1, 2016, the U.S. Patent and Trademark Office duly and legally issued U.S. Patent No. 9,274,625, entitled “Touch Screen Shield” to inventors Stephen Wilson, Bart Wilson, and Seth Wilson.

31. Racing Optics is the owner by assignment of the ‘625 patent and possess all rights of recovery under the ‘625 patent. A true and correct copy of the ‘625 patent is attached hereto as Exhibit F and incorporated herein by reference.

COUNT 1 – INFRINGEMENT OF U.S. PATENT NO. 9,128,545

32. Racing Optics repeats and realleges the allegations in the above paragraphs as though fully set forth herein.

33. Aevoe has made, used, offered for sale, sold in and/or imported into the United States screen protectors for installation on electronic devices. As relevant here, these screen protectors include at least Aevoe’s various iVisor AG, iVisor XT, and iVisor Glass product offerings (“the Accused Products”). A list of Accused Products is attached hereto as Exhibit D³ and Racing Optics reserves the right to update this list as discovery proceeds. Aevoe has directly infringed, induced infringement and/or contributed to infringement of at least claims 1, 3-5, and 7-9 of the

³ Exhibit D of the Original Complaint has been updated to include only Accused Products identified Racing Optics’ Initial Disclosure of Asserted Claims and Infringement Contentions pursuant to LR 16.1-6 served on Aevoe on November 23, 2015. This Amended Complaint addresses this housekeeping change to avoid any confusion.

1 '545 patent⁴ by testing the Accused Products, and at least encouraging and promoting the
 2 installation of the Accused Products in a manner that infringes at least claims 12, 14-16, and 18-
 3 20 of the '545 patent. Aevoe's infringement is ongoing.

4 34. Upon information and belief, Aevoe knew or should have known about the '545 patent
 5 since July of 2012 when Aevoe first contacted Racing Optics regarding the '443 application
 6 which issued as the '545 patent. Aevoe has received further notice of the '545 patent at least as
 7 of the date this lawsuit was filed.

8 35. Upon information and belief, Aevoe has tested the Accused Products, and in doing so has
 9 used the Accused Products in a manner that results in the infringement of at least claims 1, 3-5,
 10 and 7-9 of the '545 patent. The installation of the Accused Products results in an infringing
 11 combination electronic device and protective shield as claimed in at least claims 1, 3-5, and 7-9
 12 of the '545 patent.

13 36. Aevoe has sold and/or offered for sale the Accused Products to resellers and end-users.
 14 Aevoe actively encourages resellers and end-users to use the Accused Products in a manner that
 15 results in the infringement at least claims 1, 3-5, and 7-9 of the '545 patent. On information and
 16 belief, Aevoe knew or should have known that the resellers and end-users using the Accused
 17 Products would directly infringe claims of the '545 patent by installing the Accused Products. On
 18 information and belief, Aevoe induced infringement in violation of 35 U.S.C. §271(b) by selling
 19 the Accused Products and encouraging installation resulting in a combination electronic device
 20 and protective shield that infringes the claims of the '545 patent, with the specific intent of
 21 encouraging end-users to infringe the claims of the '545 patent without a reasonable, good faith
 22 belief that its actions did not induce infringement.

23 37. Aevoe's inducement of infringement arises, at least in part, because Aevoe encourages
 24 end-users to use the Accused Products to perform a method that results in a product claimed by
 25 the '545 patent. For example, Aevoe provides instructions to manufacturers, customers, resellers

26 ⁴ Racing Optics listed claims 12, 14-16, and 18-20 of the '545 patent in the Original Complaint
 27 and asserted claims 1, 3-5, 7-9 in Racing Optics' Initial Disclosure of Asserted Claims and
 28 Infringement Contentions pursuant to LR 16.1-6 served on Aevoe on November 23, 2015. This
 Amended Complaint addresses this housekeeping change to avoid any confusion.

1 and end-use customers regarding the use and operation of the Accused Products that result in an
2 infringing combination electronic device and protective shield. Such instructions include at least
3 the instructions provided for the iVisor AG for iPhone 6, iVisor XT for iPhone 6, and iVisor
4 Glass for iPhone 6, which have been attached hereto as Exhibit E, as well as similar instructions
5 and support documentation available on Aevoe's website⁵ for other Accused Products.

6 38. The method of installation of the Accused Products encourages end-users to perform a
7 method that results in a combination electronic device and protective shield by encouraging the
8 end-user to position a screen protector that includes a film such that the film is spaced slightly
9 apart from the screen of the electronic device, while maintaining the touch sensitivity of the
10 screen through the shield.

11 39. Aevoe encourages end-users to remove the protective film from the iVisor product to
12 expose an adhesive positioned on the outer periphery of the protective film. Aevoe encourages
13 the end-users to align the iVisor product with the screen of the electronic device it is being
14 installed on (e.g., iPhone, iPad, etc.), and to gently apply pressure around the outer periphery of
15 the iVisor product to secure it in place.

16 40. With these acts, Aevoe has further contributorily infringed one or more claims of the '545
17 patent in violation of 35 U.S.C. §271(c). On information and belief, Aevoe knew or should have
18 known about the '545 patent as described above. On information and belief, Aevoe knew the
19 Accused Products were especially made or especially adapted for use in a way that infringes at
20 least claims 1, 3-5, and 7-9 of the '545 patent. On information and belief, Aevoe knew each of
21 the Accused Products were not a staple article or commodity of commerce suitable for substantial
22 non-infringing uses. The Accused Products have no substantial use that does not infringe the
23 claims of the '545 patent. On information and belief, Aevoe knew that end-users were installing
24 the Accused Products resulting in a combination electronic device and protective shield that
25 infringes at least claims 1, 3-5, and 7-9 of the '545 patent. End-users have used the Accused
26 Products in a manner that results in infringement at least claims 1, 3-5, and 7-9 of the '545 patent.

27
28 ⁵ See Aevoe's website at: <http://www.moshi.com/film-protectors/screen-protectors>

41. Aevoe has infringed and continues to infringe the claims of the ‘545 patent with knowledge of Racing Optics’ rights in the ‘545 patent. Aevoe’s acts of infringement of the ‘545 patent have been and continue to be willful and deliberate. On information and belief, Aevoe acted despite an objectively high likelihood that its actions constituted infringement of a valid patent claim, and knew or should have known of this objectively-defined risk of infringement. Racing Optics is entitled to increased damages under 35 U.S.C. §284 and attorneys’ fees and costs under 35 U.S.C. §285.

42. Aevoe’s infringement has injured Racing Optics and Racing Optics is entitled to recover damages adequate to compensate for such infringement, including lost profits, but in no case less than a reasonable royalty for Aevoe’s use of the invention claimed by the ‘545 patent.

43. Aevoe’s infringement of the ‘545 patent has irreparably injured Racing Optics and will continue to injure Racing Optics unless and until the Court enters an injunction prohibiting Aevoe and those acting on its behalf from committing further acts of infringement by enjoining the further use, offer for sale, sale, and importation into the United States of the Accused Products, the installation of which results in a device claimed by the ‘545 patent.

COUNT 2 – INFRINGEMENT OF U.S. PATENT NO. 9,104,256

44. Racing Optics repeats and realleges the allegations in the above paragraphs as though fully set forth herein.

45. Aevoe has made, used, offered for sale, sold in and/or imported into the United States screen protectors for installation on electronic devices. As relevant here, these screen protectors include at least the Accused Products. Aevoe has directly infringed, induced infringement and/or contributed to infringement of at least claims 1-4, 6, 7, 9-17, and 19-23 of the ‘256 patent by testing the Accused Products, and at least encouraging and promoting the installation of the Accused Products in a manner that infringes at least claims 1-4, 6, 7, 9-17, and 19-23 of the ‘256 patent. Aevoe’s infringement is ongoing.

46. Upon information and belief, Aevoe knew or should have known about the ‘256 patent since U.S. Application Serial No. 14/599,176, which ultimately issued as the ‘256 patent, published on May 14, 2015. The ‘256 patent claims priority to the ‘620 patent and ultimately to

1 the '443 application. As described above, Aevoe was in contact with Racing Optics about that
2 '443 application as early as July of 2012. Upon information and belief, Aevoe therefore knew or
3 should have known about the '256 patent at least as of the publication of the '176 application.
4 Aevoe has received further notice of the '256 patent at least as of the date this lawsuit was filed.

5 47. Upon information and belief, Aevoe has tested the Accused Products, and in doing so has
6 used the Accused Products in a manner that infringes at least claims 1-4, 6, 7, 9-17, and 19-23 of
7 the '256 patent. The method of installation of the Accused Products includes performing the
8 claimed steps for protecting a screen of an electronic device, for example by positioning a screen
9 protector having a film on a device, such that the film of the screen protector is spaced slightly
10 apart from the touch screen of the electronic device, while providing for continued use of the
11 touch screen of the electronic device without producing visible interference patterns during use.
12 The installation of the Accused Products results in a device that infringes the '256 patent.

13 48. Aevoe has sold and/or offered for sale the Accused Products to resellers and end-users.
14 Aevoe actively encourages resellers and end-users to use the Accused Products in a manner that
15 infringes at least claims 1-4, 6, 7, 9-17, and 19-23 of the '256 patent. On information and belief,
16 Aevoe knew or should have known that the resellers and end-users using the Accused Products
17 would directly infringe claims of the '256 patent by installing the Accused Products. On
18 information and belief, Aevoe induced infringement in violation of 35 U.S.C. §271(b) by selling
19 the Accused Products and encouraging end-users to perform a method covered by the '256 patent,
20 with the specific intent of encouraging end-users to infringe claims of the '256 patent without a
21 reasonable, good faith belief that its actions did not induce infringement. On information and
22 belief, Aevoe also induced infringement in violation of 35 U.S.C. §271(b) by selling the Accused
23 Products and encouraging end-users to install the Accused Devices, resulting in a device that
24 infringes claims of the '256 patent, with the specific intent of encouraging end-users to infringe
25 claims of the '256 patent without a reasonable, good faith belief that its actions did not induce
26 infringement.

27 49. Aevoe's inducement of infringement arises, at least in part, because Aevoe encourages
28 end-users to use the Accused Products to perform the method claimed by the '256 patent resulting

1 in a device that infringes claims of the '256 patent. For example, Aevoe provides instructions to
2 manufacturers, customers, resellers and end-use customers regarding the use and operation of the
3 Accused Products in an infringing way that results in an infringing product. Such instructions
4 include for example, the instructions provided with the iVisor AG for iPhone 6, iVisor XT for
5 iPhone 6, and iVisor Glass for iPhone 6 products, which have been attached hereto as Exhibit E,
6 and similar instructions and support documentation available on Aevoe's website⁶ for other
7 Accused Products.

8 50. More particularly, the method of installation for the Accused Products encourages end-
9 users to perform the claimed steps for protecting a screen of an electronic device including
10 encouraging the end-user to position a film spaced slightly apart from the screen of the electronic
11 device. Aevoe first encourages end-users to remove the protective film from the iVisor product
12 to expose an adhesive positioned on the outer periphery of the protective film. Aevoe encourages
13 the end-users to align the iVisor product with the screen of the electronic device it is being
14 installed on (e.g., iPhone, iPad, etc.), and to gently apply pressure around the outer periphery of
15 the iVisor product to secure it in place. The installation of the Accused Products results in a
16 device that infringes claims of the '256 patent directed to a combination electronic device and
17 protective shield that includes a film spaced slightly apart from the screen of the electronic
18 device.

19 51. With these acts, Aevoe has further contributorily infringed one or more claims of the '256
20 patent in violation of 35 U.S.C. §271(c). On information and belief, Aevoe knew or should have
21 known about the '256 patent as described above. On information and belief, Aevoe knew the
22 Accused Products were especially made or especially adapted for use in a manner that infringes at
23 least claims 1-4, 6, 7, and 9-17, 19-23 of the '256 patent. On information and belief, Aevoe knew
24 that each of the Accused Products is not a staple article or commodity of commerce suitable for
25 substantial non-infringing uses. The Accused Products have no substantial use that does not
26 infringe the claims of the '256 patent. On information and belief, Aevoe knew that end-users
27 were performing the claimed method of the '256 patent using the Accused Products and that the

28 ⁶ See Aevoe's website at: <http://www.moshi.com/film-protectors/screen-protectors>

1 resulting devices infringe claims of the '256 patent. End-users have used the Accused Products in
2 a manner that infringes at least claims 1-4, 6, 7, and 9-17, and 19-23 of the '256 patent.

3 52. Aevoe has infringed and continues to infringe the claims of the '256 patent with
4 knowledge of Racing Optics' rights in the '256 patent. Aevoe's acts of infringement of the '256
5 patent have been and continue to be willful and deliberate. On information and belief, Aevoe
6 acted despite an objectively high likelihood that its actions constituted infringement of a valid
7 patent claim, and knew or should have known of this objectively-defined risk of infringement.
8 Racing Optics is entitled to increased damages under 35 U.S.C. §284 and attorneys' fees and
9 costs under 35 U.S.C. §285.

10 53. Aevoe's infringement has injured Racing Optics and Racing Optics is entitled to recover
11 damages adequate to compensate for such infringement, including lost profits, but in no case less
12 than a reasonable royalty for Aevoe's use of the invention claimed by at least claims 1-4, 6, 7, 9-
13 17, and 19-23 of the '256 patent.

14 54. Aevoe's infringement of the '256 patent has irreparably injured Racing Optics and will
15 continue to injure Racing Optics unless and until the Court enters an injunction prohibiting Aevoe
16 and those acting on its behalf from committing further acts of infringement by enjoining the
17 further use, offer for sale, sale, and importation into the United States of the Accused Products for
18 performing the claimed method of the '256 patent and for installations of the Accused Products
19 that result in devices that infringe claims of the '256 patent.

20 **COUNT 3 – INFRINGEMENT OF U.S. PATENT NO. 8,974,620**

21 55. Racing Optics repeats and realleges the allegations in the above paragraphs as though
22 fully set forth herein.

23 56. Aevoe has made, used, offered for sale, sold in and/or imported into the United States
24 screen protectors for installation on electronic devices. As relevant here, these screen protectors
25 include at least the Accused Products. Aevoe has directly infringed, induced infringement and/or
26 contributed to infringement of at least claims 1-11, 13, and 14 of the '620 patent by testing the
27 Accused Products, and at least encouraging and promoting the installation of the Accused

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1 Products in a manner that infringes at least claims 1- 11, 13, and 14 of the ‘620 patent. Aevoe’s
2 infringement is ongoing.

3 57. Upon information and belief, Aevoe knew or should have known about the ‘620 patent
4 since U.S. Application Serial No. 13/838,311 (hereinafter the “‘311 Application”), which
5 ultimately issued as the ‘620 patent, published on August 15, 2013. As described above, Aevoe
6 knew about the ‘311 application’s parent ‘443 application, and was in contact with Racing Optics
7 about that ‘443 application, as early as July of 2012. The ‘311 application is a divisional
8 application of the ‘443 application. On information and belief, Aevoe therefore knew or should
9 have known about the ‘311 Application, which ultimately issued as the ‘620 patent, at least as of
10 the publication of the ‘311 application. Aevoe has received further notice of the ‘620 patent at
11 least as of the date this lawsuit was filed.

12 58. Upon information and belief, Aevoe has tested the Accused Products, and in doing so has
13 used the Accused Products in a manner that infringes at least claims 1- 11, 13, and 14 of the
14 claims of the ‘620 patent. The method of installation of the Accused Products includes
15 performing the claimed steps for protecting a screen of an electronic device, for example by
16 positioning a film spaced slightly apart from the screen of the electronic device.

17 59. Aevoe has sold and/or offered for sale the Accused Products to resellers and end-users.
18 Aevoe actively encourages resellers and end-users to use the Accused Products in a manner that
19 infringes at least claims 1-11, 13, and 14 of the ‘620 patent. On information and belief, Aevoe
20 knew or should have known that the resellers and end-users using the Accused Products would
21 directly infringe claims of the ‘620 patent during installation of the Accused Products. On
22 information and belief, Aevoe induced infringement in violation of 35 U.S.C. §271(b) by selling
23 the Accused Products and encouraging end-users to perform a method covered by the ‘620 patent
24 with the specific intent of encouraging end-users to infringe the claims of the ‘620 patent without
25 a reasonable, good faith belief that its actions did not induce infringement.

26 60. Aevoe’s inducement of infringement arises, at least in part, because Aevoe encourages
27 end-users to use the Accused Products to perform the method claimed by the ‘620 patent. For
28 example, Aevoe provides instructions to manufacturers, customers, resellers and end-use

1 customers regarding the use and operation of the Accused Products in an infringing way. Such
2 instructions include for example, the instructions provided with the iVisor AG for iPhone 6,
3 iVisor XT for iPhone 6, and iVisor Glass for iPhone 6 products, which have been attached hereto
4 as Exhibit E, and similar instructions and support documentation available on Aevoe's website⁷
5 for other Accused Products.

6 61. More particularly, the method of installation for the Accused Products encourages end-
7 users to perform the claimed steps for protecting a screen of an electronic device, including
8 encouraging the end-user to position a film spaced slightly apart from the screen of the electronic
9 device. Aevoe first encourages end-users to remove the protective film from the iVisor product to
10 expose an adhesive positioned on the outer periphery of the protective film. Aevoe encourages
11 the end-users to align the iVisor product with the screen of the electronic device on which it is
12 being installed (e.g., iPhone, iPad, etc.), and to gently apply pressure around the outer periphery
13 of the iVisor product to secure it in place.

14 62. With these acts, Aevoe has further contributorily infringed at least claims 1-11, 13, and 14
15 of the '620 patent in violation of 35 U.S.C. §271(c). On information and belief, Aevoe knew or
16 should have known about the '620 patent as described above. On information and belief, Aevoe
17 knew each of the Accused Products were especially made or especially adapted for use in a
18 method that infringes at least claims 1-11, 13, and 14 of the '620 patent. On information and
19 belief, Aevoe knew that each of the Accused Products is not a staple article or commodity of
20 commerce suitable for substantial non-infringing uses. The Accused Products have no substantial
21 use that does not infringe the claims of the '620 patent. On information and belief, Aevoe knew
22 that end-users were performing the claimed method of the '620 patent using the Accused
23 Products. As Aevoe expected, end-users have used the Accused Products in a manner that
24 infringes at least claims 1-11, 13, and 14 of the '620 patent.

25 63. Aevoe has infringed and continues to infringe the claims of the '620 patent with
26 knowledge of Racing Optics' rights in the '620 patent. Aevoe's acts of infringement of the '620
27 patent have been and continue to be willful and deliberate. On information and belief, Aevoe

28 ⁷ See Aevoe's website at: <http://www.moshi.com/film-protectors/screen-protectors>

acted despite an objectively high likelihood that its actions constituted infringement of a valid patent claim, and knew or should have known of this objectively-defined risk of infringement. Racing Optics is entitled to increased damages under 35 U.S.C. §284 and attorneys' fees and costs under 35 U.S.C. §285.

64. Aevoe's infringement has injured Racing Optics and Racing Optics is entitled to recover damages adequate to compensate for such infringement, including lost profits, but in no case less than a reasonable royalty, for Aevoe's use of the invention claimed by at least claims 1-11, 13, and 14 of the '620 patent.

65. Aevoe's infringement of the '620 patent has irreparably injured Racing Optics and will continue to injure Racing Optics unless and until the Court enters an injunction prohibiting Aevoe and those acting on its behalf from committing further acts of infringement by enjoining the further use, offer for sale, sale, and importation into the United States of the Accused Products for performing the claimed method of the '620 patent.

COUNT 4 – INFRINGEMENT OF U.S. PATENT NO. 9,274,625

66. Racing Optics repeats and realleges the allegations in the above paragraphs as though fully set forth herein.

67. Aevoe has made, used, offered for sale, sold in and/or imported into the United States screen protectors for installation on electronic devices. As relevant here, these screen protectors include at least the Accused Products. Aevoe has directly infringed, induced infringement and/or contributed to infringement of at least claims 1, 2, 4-11, 16-22, and 24-30 of the '625 patent by making, offering for sale, selling, testing, and/or importing the Accused Products, and at least encouraging and promoting the use of the Accused Products that infringe at least claims 1, 2, 4-11, 16-22, and 24-30 of the '625 patent. Aevoe's infringement is ongoing⁸.

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⁸ Racing Optics listed allowed claims 16, 17, 18, 27, 34, 36-38, 40-45, and 47-56 of the '625 patent in Motion for Leave to Amend the Pleadings and asserted issued claims 1, 2, 4-11, 16-22, and 24-30 in Racing Optics's Initial Disclosure of Asserted Claims and Infringement Contentions for the '625 patent served on Aevoe on April 29, 2016 pursuant to the Court's Order in Dkt. No. 76. This amended complaint addresses this housekeeping change to avoid any confusion.

1 68. Upon information and belief, Aevoe knew or should have known about the '625 patent
2 since U.S. Application Serial No. 13/186,690 (hereinafter the "'690 application"), which
3 ultimately issued as the '625 patent, published on July 26, 2012. As described above, Aevoe
4 knew about the '690 application's parent '443 application, and was in contact with Racing Optics
5 about that '443 application, as early as mid-July of 2012. The '690 application is a Continuation-
6 in-part application of the '443 application. On information and belief, Aevoe therefore knew or
7 should have known about the '690 Application, which ultimately issued as the '625 patent, at
8 least as of the publication of the '690 application. Aevoe has received further notice of the '625
9 patent at least as of the date this lawsuit was filed.

10 69. Upon information and belief, Aevoe has made, offered for sale, sold in and/or imported
11 into the United States the Accused Products, and in doing so has infringed, either directly or
12 under the doctrine of equivalents, at least allowed claims 1, 2, 4-11, 16-22, and 24-30 of the
13 claims of the '625 patent. The Accused Products include the claimed features for protecting a
14 screen of an electronic device, for example by positioning a film spaced slightly apart from the
15 screen of the electronic device.

16 70. Aevoe has sold and/or offered for sale to resellers and end-users the Accused Products
17 that infringe at least allowed claims 1, 2, 4-11, 16-22, and 24-30 of the '625 patent. On
18 information and belief, Aevoe knew or should have known that the resellers and end-users using
19 the Accused Products would directly infringe claims of the '625 patent by installing the Accused
20 Products that include the claimed features for protecting a screen of an electronic device. On
21 information and belief, Aevoe induced infringement in violation of 35 U.S.C §271(b) by selling
22 the Accused Products and encouraging installation of a shield for a touch screen of an electronic
23 device that infringes the claims of the '625 patent, with specific intent of encouraging end-users
24 to infringe the claims of the '625 patent without a reasonable good faith belief that its actions did
25 not induce infringement.

26 71. Aevoe's inducement of infringement arises, at least in part, because Aevoe encourages
27 end-users to use the Accused Products that include the features claimed by the '625 patent. For
28 example, Aevoe provides the Accused Products, which, as evidenced by Aevoe's instructions

1 attached hereto as Exhibit E, are specially made for use in a manner infringing one or more
2 claims of the '625, such as allowed claims 1, 2, 4-11, 16-22, and 24-30. For example, Aevoe
3 provides instructions to manufacturers, customers, resellers and end-use customers regarding the
4 use and operation of the Accused Products that result in an infringing product. Such instructions
5 include at least the instructions provided for the iVisor AG for iPhone 6, iVisor XT for iPhone 6,
6 and iVisor Glass for iPhone 6, which have been attached hereto as Exhibit E, as well as similar
7 instructions and support documentation available on Aevoe's website⁹ for other Accused
8 Products.

9 72. More particularly, installation of the Accused Products encourages end-users to protect a
10 screen of an electronic device including encouraging the end-user to position a film spaced
11 slightly apart from the screen of the electronic device. Aevoe first encourages end-users to
12 remove the protective film from the iVisor product to expose an adhesive positioned on the outer
13 periphery of the protective film. Aevoe encourages the end-users to align the iVisor product with
14 the screen of the electronic device it is being installed on (e.g. iPhone, iPad, etc.), and to gently
15 apply pressure around the outer periphery of the iVisor product to secure it in place. The
16 installation of the Accused Products results in end-users using a device that infringes claims of
17 the '625 patent directed to a protective shield for a touch sensitive screen of an electronic device
18 that includes a film spaced slightly apart from the screen of the electronic device.

19 73. With these acts, Aevoe has further contributorily infringed one or more claims of the '625
20 patent in violation of 35 U.S.C. §271(c). On information and belief, Aevoe knew or should have
21 known about the '625 patent as described above. On information and belief, Aevoe knew the
22 Accused Products were especially made or especially adapted for use in a way that infringes at
23 least allowed claims 1, 2, 4-11, 16-22, and 24-30 of the '625 patent. On information and belief,
24 Aevoe knew each of the Accused Products were not a staple article or commodity of commerce
25 suitable for substantial non-infringing uses. The Accused Products have no substantial use that
26 does not infringe the claims of the '625 patent. On information and belief, Aevoe knew that end-
27

28 ⁹ See Aevoe's website at: <http://www.moshi.com/film-protectors/screen-protectors>

1 users were using the Accused Products that infringes at least allowed claims 1, 2, 4-11, 16-22,
2 and 24-30 of the '625 patent.

3 74. Aevoe has infringed and continues to infringe the claims of the '625 patent with
4 knowledge of Racing Optics' rights in the '625 patent. Aevoe's acts of infringement of the '625
5 patent have been and continue to be willful and deliberate. On information and belief, Aevoe
6 acted despite an objectively high likelihood that its actions constituted infringement of a valid
7 patent claim, and knew or should have known of this objectively-defined risk of infringement.
8 Racing Optics is entitled to increased damages under 35 U.S.C. §284 and attorneys' fees and
9 costs under 35 U.S.C. §285.

10 75. Aevoe's infringement has injured Racing Optics and Racing Optics is entitled to recover
11 damages adequate to compensate for such infringement, including lost profits, but in no case less
12 than a reasonable royalty, for Aevoe's use of the invention claimed by at least allowed claims 1,
13 2, 4-11, 16-22, and 24-30 of the '625 patent.

14 76. Aevoe's infringement of the '625 patent has irreparably injured Racing Optics and will
15 continue to injure Racing Optics unless and until the Court enters an injunction prohibiting Aevoe
16 and those acting on its behalf from committing further acts of infringement by enjoining the
17 further use, offer for sale, sale, and importation into the United States of the Accused Products for
18 embodying the claimed apparatus of the '625 patent.

19 **DEMAND FOR JURY TRIAL**

20 77. Racing Optics hereby respectfully demands a jury for all issues so triable.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Racing Optics respectfully requests this Court enter judgment in its favor
23 and grant the following relief:

- 24 A. Adjudge Aevoe's accused products infringe the '545, '256, '620, and '625 patents;
- 25 B. Award Racing Optics damages in an amount adequate to compensate Racing
26 Optics for Aevoe's infringement of the '545, '256, '620, and '625 patents, including lost profits,
27 but in no event less than a reasonable royalty under 35 U.S.C. §284;
- 28 C. Award Racing Optics enhanced damages pursuant to 35 U.S.C. §284;

1 D. Award Racing Optics pre-judgment interest and post-judgment interest at the
2 maximum rate allowed by law;

3 E. Award Racing Optics its costs of court;

4 F. Enter an order declaring that this is an exceptional case and award Racing Optics
5 its reasonable attorneys' fees pursuant to 35 U.S.C. §285;

6 G. Order an accounting for damages;

7 H. Enter an injunction enjoining Defendants, and all others in active concert with
8 Defendants, from further infringement of the '545, '256, '620, and '625 patents;

9 ///

10 ///

11 ///

1 I. Award a compulsory future royalty for the ‘545, ‘256, ‘620, and ‘625 patents to
2 the extent an injunction does not issue; and

3 J. Award such further relief as the Court deems just and proper.

4 Respectfully submitted by:

5 Dated this 29th day of April, 2016.

SNELL & WILMER L.L.P.

6
7 By: /s/ Kelly H. Dove

8 Chad R. Fears, Esq.

9 Nevada Bar No. 6970

10 Kelly Dove, Esq.

11 Nevada Bar No. 10569

12 3883 Howard Hughes Parkway, Suite 1100

13 Las Vegas, NV 89169

**KILPATRICK TOWNSEND &
STOCKTON LLP**

14 Joshua Pond (Pro Hac Vice)

15 Akarsh P. Belagodu (Pro Hac Vice)

16 Suite 900, 607 14th Street, NW

17 Washington, DC 20005

18 Steven Moore (Pro Hac Vice)

19 Eighth Floor, Two Embarcadero Center

20 San Francisco, CA 94111

21 Megan E. Bussey (Pro Hac Vice)

22 The Grace Building

23 1114 Avenue of the Americas

24 New York, NY 10036

25 William E. Mosley (Pro Hac Vice)

26 Norris P. Boothe (Pro Hac Vice)

27 1080 Marsh Road

28 Menlo Park, CA 94025

HIGGINS BENJAMIN, PLLC

Kenneth Gumbiner (Pro Hac Vice)

101 West Friendly Avenue, Suite 500

Greensboro, NC 27401

Attorneys for Plaintiff

RACING OPTICS, INC.

Snell & Wilmer

L.L.P.
LAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
702.784.5200

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On April 29, 2016, I caused to be served a true and correct copy of the foregoing **AMENDED COMPLAINT FOR PATENT INFRINGEMENT JURY TRIAL DEMANDED** upon all parties involved in this case and receiving service via the Court's CM/ECF website.

/s/ Ruby Lengsavath

An Employee of Snell & Wilmer L.L.P.

24004849

Snell & Wilmer

L.L.P.
LAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
702.784.5200